

country. Nearly half of all Americans—136 million—live in districts or circuits that have a judicial vacancy that could be filled today if the Senate Republicans just agreed to vote on the nominations currently pending on the Executive Calendar. As many as 21 states are served by Federal courts with vacancies that would be filled by nominations stalled on the Senate calendar. Millions of Americans across the country are being harmed by delays in overburdened courts. The Republican leadership should explain to the American people why they will not consent to vote on the qualified, consensus candidates nominated to fill these extended judicial vacancies.

The unnecessary delays in our consideration of judicial nominations have contributed to the longest period of historically high vacancy rates in the last 35 years. The number of judicial vacancies rose above 90 in August 2009, and it has stayed near or above that level ever since. Vacancies are twice as high as they were at this point in President Bush's first term when the Senate was expeditiously voting on consensus judicial nominations. We must bring an end to these needless delays in the Senate so that we can ease the burden on our Federal courts so that they can better serve the American people.

Last week, the Senate voted to confirm Judge Jennifer Guerin Zipp, who was nominated to fill the emergency judicial vacancy created by the tragic death of Judge Roll in the Tucson, AZ, shootings. I was pleased that, with cooperation from Republican Senators, the time from when the Judiciary Committee reported Judge Zipp's nomination to full Senate consideration was less than a month even including a recess period. All nominations should move at that rate. It should not take a tragedy to spur us to action to fill a judicial emergency vacancy. Indeed, the time it took the Senate to consider Judge Zipp's nomination was in line with the average time it took for the Senate to consider President Bush's unanimously reported judicial nominations, 28 days. Her nomination would not have been an exception during those years as it regrettably has become today. President Obama's consensus nominations, reported with the unanimous support of every Republican and Democrat on the Judiciary Committee, have waited an average of 79 days on the Executive Calendar before consideration by the Senate. Today's nominee is a good example. She was reported unanimously on July 14. That was nearly 3 months ago.

Last week, I invited Justice Scalia and Justice Breyer to appear before the Judiciary Committee and discuss the important role that judges play under our Constitution. Justice Scalia agreed that the extensive delays in the confirmation process are already having a chilling effect on the ability to attract talented nominees to the Federal bench. Chief Justice Roberts has also

described the "persistent problem of judicial vacancies in critically overworked districts." Hardworking Americans are denied justice when their cases are delayed by overburdened courts. While people appearing in court are waiting years before a judge rules on their case, they feel they are being forced to live the old adage "justice delayed is justice denied."

Today the Senate will confirm an experienced, consensus nominee who could and should have received a vote prior to the August recess. Jane Triche-Milazzo is nominated to fill a vacancy in the U.S. District Court for the Eastern District of Louisiana. Currently a Louisiana State court judge, she previously spent 16 years in private practice in her family's law firm in Napoleonville, LA. Judge Triche-Milazzo has the bipartisan support of her home State Senators, Democratic Senator MARY LANDRIEU and Republican Senator DAVID VITTER. The Judiciary Committee favorably reported her nomination without a single dissenting vote almost 3 months ago. I expect that the Senate will confirm her unanimously today.

We must do more to make progress in considering the other 25 judicial nominations pending on the Senate's Executive Calendar. The excessive number of vacancies has persisted in Federal courts throughout the Nation for far too long. The American people should not have to wait for the Senate to do its constitutional duty of confirming judges to the Federal bench. With millions of Americans currently affected by the vacancy crisis in our courts, there is serious work to be done.

Mr. President, I ask unanimous consent to have printed in the RECORD the editorial to which I referred.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Miami Herald, Oct. 2, 2011]

THE OTHER FEDERAL CRISIS

In the month since Congress returned from the summer recess, the crisis over the deficit and federal spending has been the focus of attention, with ideological gridlock obstructing progress. But partisan politics has also produced a separate crisis in the nation's federal courts.

During September, the Senate confirmed a grand total of three federal judges—leaving 95 vacancies in courthouses around the country. This means that there are simply not enough federal judges to handle the judicial workload, resulting in justice delayed in both criminal and civil cases. In 35 of those instances, including two district seats in the Southern District of Florida, the courts have declared a judicial emergency, meaning the dockets are overloaded to the breaking point.

According to a recent report by the Congressional Research Service, this is a historically high level of vacancies, and the prolonged slowness in filling the empty seats makes the Obama presidency the longest period of high vacancy rates in the federal judiciary in 35 years.

Clearly, the Senate is not fulfilling its constitutional duty to confirm judges. Some 58 Obama administration nominees are pending in the Senate to fill the 95 vacancies. Repub-

lican senators have complained that there should be a nominee for every vacancy—fair enough—but that does not explain why so many of the nominations have been stalled for so long.

The Senate, of course, has a duty to ensure that nominees are qualified. No one wants a "fast-tracked" judge hearing cases. But it's hard to escape the conclusion that partisan politics rather than the quality of the nominees is the root of the problem when even consensus candidates must wait for prolonged periods.

This Monday, for example, the Senate is expected to fill some of those vacancies when six of the nominations go to the floor for a vote, meaning there has been a preceding agreement not to block the vote.

That generally leads to confirmation. Of those six, five have been pending since May and June—and all of them were approved with a unanimous vote by Democratic and Republican members of the Senate Judiciary Committee. In other words, there is no question that the nominees have the qualifications to do the job—so why the delay?

In the past, Democrats have been slow to approve nominees from Republican presidents. But the record shows that approvals for nominees by the last Republican president, George W. Bush, moved faster even when Democrats had the power to block confirmation.

At this point in the presidency of President Bush, 144 federal circuit and district court judges had been confirmed. By comparison, according to Vermont Sen. Patrick Leahy, chairman of the Judiciary Committee, total confirmations of federal circuit and district court judges during the first three years of the Obama administration have been only 98. "The Senate has a long way to go before the end of next year to match the 205 confirmations of President Bush's judicial nominees during his first term," he said.

This is a problem senators can solve easily. First, vote on all 27 pending nominees who have already won committee approval, beginning with those who received a unanimous vote. Then move the other nominations to the floor without unreasonable delay. The deterioration of the federal judiciary because of partisan politics is inexcusable.

Mr. LEAHY. I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant editor of the Daily Digest proceeded to call the roll.

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF JANE MARGARET TRICHE-MILAZZO TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider